

September 22, 2015

Brian Butler  
Office of Engineering and Technology  
Federal Communications Commission  
445 12th Street SW  
Washington, D.C. 20554

Reference: ET Docket No. 15-170; RM-11673; FCC 15-92

Dear Mr. Butler,

UPS Supply Chain Solutions, Inc. (UPS SCS) is pleased to provide the following comments in response to the above-referenced notice of proposed rulemaking.

As one of the largest filers by volume of entries into the United States, UPS SCS has unique perspective on the partnership between the customs broker, importers, Customs and Border Protection (CBP) and other government agencies.

1. **Request: UPS SCS requests that FCC not require CBP to collect FCC-specific data elements in Part 1 when reporting of FCC Form 740 data is discontinued.** We agree with your decision to eliminate the filing of FCC Form 740 (Import Declaration) at the time of entry, as discussed in Paragraph 69. At its inception, the purpose of Form 740 was to provide information in order to prevent unauthorized radio frequency (RF) devices from entering U.S. commerce. As RF devices are increasingly incorporated into a myriad of consumer goods, the burden on FCC to create tariff flags encompassing the scope of products for which FCC reporting is required by the trade has grown, and the collection of FCC Form 740 data for all potentially regulated product has become not only nearly impossible, but yields few enforcement benefits for the FCC.

While the notice of proposed rulemaking states that much of the information on the Form 740 is already filed with CBP as part of the entry process, we'd like to point out that apart from the FCC conditions in Part II on the form, certain fields in Part 1 are not normally collected by CBP, such as the device model/type name or number, the trade name, the FCC ID, or the description of equipment. For these reasons, **UPS SCS requests that FCC not require CBP to collect FCC-specific data elements in Part 1 when reporting of FCC Form 740 data is discontinued.**

2. **Request: UPS SCS requests that the wording 'or their designated customs broker' be struck from the proposed rule.** The language in the proposed new rule in Section 2.1203(a) reads:

*"No radio frequency device may be imported into the Customs territory of the United States unless the importer or ultimate consignee, or their designated customs broker, determines that the device meets one of the conditions of entry set out in this section."*  
[Emphasis added.]

*"(c) Whoever makes a determination pursuant to Section 2.1203(a) must provide, upon request made within one year of the date of entry, documentation on how an imported radio frequency device was determined to be in compliance with Commission requirements."*

While we generally support this proposed change to eliminate reporting of the Form 740 data at time of import, we disagree that an importer's designated customs broker should be one of the parties who have an obligation to make a determination "that the device meets one of the conditions set out in this section" nor provide, upon request, supporting documentation for that determination [Section 2.1203(c)]. Although customs brokers play an important role in facilitating the entry of goods into the U.S., we do not have and should not be required to obtain the necessary knowledge of the product's design or manufacture to render such a judgment. Requiring such knowledge of a customs broker would open the door to requiring customs brokers to obtain similar knowledge on a universe of products imported into the US; this is not practical or possible. **UPS SCS requests that the wording 'or their designated customs broker' be struck from the proposed rule.**

**3. Request: UPS SCS requests that the Commission remove the obligation on a customs broker acting as the importer of record ("IOR") to determine device compliance.**

Under the same section of the proposed rule [2.1203(a)], the Commission intends, among other things, to require (1) that the "importer of record" often, a customs broker in both the land border and courier environments "determines that the device meets one of the conditions of entry set out in this section" and; (2) that the party "who makes a determination...must provide...documentation on how an imported radio frequency device was determined to be in compliance with Commission requirements".

Specifically, UPS SCS requests that the Commission remove the obligation on a customs broker acting as the importer of record ("IOR") to determine device compliance because: (1) the proposal creates a "compliance" loophole that de-incentivizes the real parties-in-interest from ensuring the compliance of their products; and (2) numerous other agencies do not make customs brokers demonstrate that the manufacturer or importer has determined that the product is in compliance with relevant standards. Therefore, manufacturers and importers that fail to execute these determinations, essentially, jeopardize consumer safety.

If the Commission requires the IOR-customs broker to determine compliance, the real parties-in-interest, e.g., the foreign manufacturer or the U.S. seller/marketer, will no

longer have responsibility to determine that the imported product is compliant. In fact, bad actors that currently evade the Commission's requirements may start seeking out customs brokers that act as IOR more frequently in order to evade their own legal obligations. Although customs brokers play an important role in facilitating the entry of goods into the U.S., including acting as IOR in particular circumstances such as in the express package and freight environments, we do not have and should not be required to obtain the necessary knowledge of the product's design or manufacture to render such a judgment. Requiring such knowledge of a customs broker would open the door to requiring customs brokers to obtain similar knowledge on a universe of products imported into the US; this is not practical or possible. Particularly in the express package and freight environment, brokers or carriers acting as IOR do not have the expertise or practical ability to handle such obligations. Accordingly, **UPS SCS requests that customs brokers acting as IOR be specifically excluded from the obligations of an IOR or real parties in interest to determine device compliance.**

For these reasons, the proposed rule, although well-intended, has dire consequences for consumer safety. UPS SCS respectfully requests that the Commission consider these problems and require the party with the knowledge and power to make their products safe the party responsible for certifying compliance with U.S. law.

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Thank you for this opportunity. Please let us know if UPS SCS can provide further information.

Sincerely,



Tom Molloy  
Director, Global Customs Compliance  
UPS Supply Chain Solutions, Inc.